

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
November 9, 2011**

Members Present

Mike Haxby	John Greenfield
Gardner Skinner	Paul Collins
Roy Galbreath	James Alcorn
James Arnold	Steve Millard
Jasen Carrier	Clay Atwood
Susan Veltman	Representative Nessel (via teleconference)

Members Absent

Senator John Andreason
Dave Whaley
Rian Van Leuven

Industrial Commission

Chairman Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Commissioner R. D. Maynard

Opening Remarks:

Chairman Jasen Carrier opened the meeting with the introduction of members and public attendees followed by a moment of silence for the loss of local attorney Andrew Schepp and former Advisory Committee Special Member Representative Pat Takasugi.

Minutes:

The Minutes of August 10, 2011 were reviewed. Upon motion by James Arnold, seconded by Roy Galbreath, the Minutes were approved as written.

Subcommittee Reports:

PFFI Proposed Legislation – (Roy Galbreath Chairman, Dave Whaley, Paul Collins, Ex-officio: Rob Shoplock, Mike Walker, Commissioner Baskin, Michael Kane, Kent Day, Woody Richards, Alan Gardner, Jasen Carrier, and Richard Owen) Subcommittee Chairman Roy Galbreath presented the latest draft legislation to amend Idaho Code §72-438, *Occupational Diseases* to include a presumption of certain cancers for professional firefighters. Mr. Galbreath reported that this subcommittee has been meeting for over a year and at the last meeting, these changes were reviewed and discussed. Some of the changes Mr. Galbreath reviewed were the definition of firefighter to coincide with the definition in the firefighter code as it pertains to retirement benefits; the removal of language for heart attack compensability; cleans up some of the language for better clarity; and adds a presumption limitation of ten years for any diagnosis following the last date the firefighter actually worked as a firefighter.

Mr. Galbreath noted that PFFI did a great job in listening to the concerns of the subcommittee members and addressing those concerns in the draft. However, the subcommittee still expressed concern over the shifting of burden of proof from employee to employer, the

possibility of more groups who have hazardous occupations wanting presumptions particular to their employment, and the increase in costs for counties and cities for the in-depth physicals needed. Mr. Galbreath stated that a subcommittee member had suggested that PFFI look into purchasing disability insurance as an alternative to changing the workers' compensation laws. Mr. Galbreath explained that due to some of the subcommittee member's unresolved concerns, the subcommittee was unable to come to a consensus. Mr. Galbreath suggested that the subcommittee be dissolved.

Public Comment:

Richard Owen, who was instrumental in drafting changes to the proposed legislation, explained that the latest changes proposed were in response to the concerns expressed by subcommittee members. Mr. Owen opined that the research presented to the subcommittee supports these changes, and that it is a good law change.

Mr. Greenfield stated that he was in support of this law change, and hopes PFFI will move forward with their proposal to the legislature as the occupational diseases and statute of limitations currently in law should be changed. Mr. Greenfield indicated that he feels the presumption is right and is thankful to the firefighters for bringing the proposal to the Advisory Committee to be vetted.

Chairman Carrier asked for consensus to dissolve the PFFI subcommittee. Consensus was reached.

Indemnity Benefit Notification – (*Chairman Jasen Carrier, Roy Galbreath, Steve Millard, Mike Haxby, and James Arnold.*) Subcommittee Chairman, Jasen Carrier, reported on the issue of employees who were injured, treated and released, and after five years needed additional treatment, and were surprised that they were no longer eligible to receive indemnity benefits. Claimant's indicated they were unaware of the time limitation and has caused concern with some employers. The subcommittee discussed how to better inform injured workers of the statute of limitation on indemnity benefits. Mr. Carrier reported that the subcommittee discussed the letter the Commission sends out to injured workers when a first report of injury is received. The letter contains information regarding the statute of limitations, and therefore the subcommittee determined that the injured employee does receive ample notification. Mr. Carrier reported that the subcommittee reviewed the letter sent to claimants by the Commission upon receipt of a first report of injury which does include pertinent information about the statute of limitation. The subcommittee determined that the letter does give sufficient notice to the claimant.

Advisory Committee members John Greenfield, Gardner Skinner, and Steve Millard, after reviewing the letter sent by the Commission, suggested adding headings and bullet points to the letter that would highlight the more important issues like the five year statute of limitation. Mr. Greenfield stated that he would send a letter to the Commission with his thoughts on changes.

James Alcorn noted that the State Insurance Fund also sends a letter to claimants that informs them of the statute of limitation upon closing their claim. A draft revision of the letter will be presented at the next Advisory Committee meeting.

Attorney Fees, § 72-432, Idaho Code (*Chairman James Arnold, Roy Galbreath, Mike Haxby, John Greenfield, Gardner Skinner, Ex-officio: Dan Bowen, Darin Monroe, Scott McDougall, Commissioner Baskin, Woody Richards, and Brad Eidam*) Subcommittee Chairman James Arnold thanked Deputy Attorney General Blair Jaynes for his help in drafting the proposed language changes to §72-432. According to Mr. Arnold, comments received by subcommittee members on the draft legislation included apprehension that the language was too broad and gave the Commission too much authority with the concern that with a different set of Commissioners in the future, the Commissioners could go too far afield. Mr. Arnold said that it was suggested that caps on medical information and attorney fees would best be contained in statute rather than rule.

Mr. Arnold and the subcommittee will work on another draft of the statute and craft a corresponding rule in hopes the subcommittee can come to a consensus. Mr. Arnold noted the subcommittee agreed in principal that something should be proposed that is narrow enough not to create exposure for employers and sureties. The subcommittee will continue to work on this and have a draft ready for the next Advisory Committee meeting.

Independent Medical Evaluations – (*Chairman Mike Haxby, Rian Van Leuven, James Arnold, Susan Veltman, Steve Millard, Paul Collins, Dave Whaley, Jasen Carrier, James Alcorn, and Gardner Skinner*) Subcommittee Chairman Mike Haxby reported that the subcommittee had a good meeting and members better understand the issues the Commission is having in discerning which independent medical evaluation (IME) is more accurate. Idaho does not regulate this area of the workers' compensation law as some other states do. Mr. Haxby noted there may be a way to improve the way IME's are handled, but there is no huge outcry to change the system which makes moving forward more difficult. The Commission and Mr. Haxby noted that Idaho Code § 72-433 and § 72-510 allows the broad based authority for the Commission to authorize an independent agency IME for those cases whose outcomes are extremely difficult to determine. Mr. Haxby remarked that there was general support by the group for the Commission to exercise this authority when necessary. Therefore, there was no consensus to continue with this subcommittee.

Commissioner Baskin noted that there are very few difficult cases involving IME's, so for now, the Commission may exercise its powers if a difficult case arises, and revisit this issue in the future as necessary. Commissioner Baskin said the initial idea from the Commission's point of view was how to better use the funds that were expended for IME's. It was first thought that Commission directed IME's would result in better outcomes, but there was not a lot of enthusiasm in that regard. Commissioner Baskin stated that one of the problems of Commission directed IME's is that the Commissioners do not know the specifics of a case until after a hearing, so directing another IME at that time would delay decisions from the Commission. Commissioner Baskin suggested that since there aren't a lot of these cases, it may be worth trying.

Mr. Greenfield reported that in California, the provider has to be qualified to be included in a pool of doctors that perform IME's, and both sides have to agree with the choice of the provider. Mr. Haxby responded that the subcommittee didn't think there would be enough doctors that would participate in such a pool.

Susan Veltman stated that there is nothing to prevent the parties from agreeing on one IME physician now, however, the lack of participating physicians would probably result in the inability to move forward with such a pool.

Gardner Skinner suggested that perhaps changing the rules to encourage an agreement between the parties for an IME would be useful.

Commissioner Maynard would like to see more cases where both parties agree to the same provider for an IME. The Advisory Committee members agreed that another meeting might be beneficial with the addition of more ex-officio attorneys and physicians.

Industrial Special Indemnity Fund Update:

James Kile, Manager of the Industrial Special Indemnity Fund (ISIF) reported that this fall's assessment notice reflects about a 2% reduction from the previous year's assessment.

Mr. Kile informed the members of ISIF's new location at 304 N. 8th Street, Room 130. Mr. Kile stated that ISIF's seven lawyers are staying busy with complaints and notices of complaints. The ISIF is currently receiving on average about three-quarters to one per week.

Issues:

Formation of Subcommittee on Healthcare Annual Updates - Commissioner Limbaugh reported that the subject of forming a subcommittee to determine the Commission's annual provider reimbursement updates was discussed during a recent meeting with the Idaho Hospital Association and several hospital representatives. Initially, in Idaho Code § 72-803, the provider fee schedule annual adjustment was tied to the Department of Health & Welfare's statute (§56-136, Idaho Code). Last session we were disconnected from that statute because Health & Welfare repealed it. Consequently, the Commission amended §72-803 that updates the fee schedule by rule approved by the legislature.

Commissioner Limbaugh noted that some hospitals and providers were concerned that the Commission may not look at changes on an annual basis, and provider rates would stay the same for several years. Commissioner Limbaugh explained how some states create a subcommittee utilizing their Advisory Committees to review and recommend annual updates to fee schedules. Commissioner Limbaugh asked if the Advisory Committee would have an interest in creating a subcommittee that would include the medical community, employers, employees, and sureties, that would provide recommendations annually to the Commission for consideration of rule changes. Commissioner Limbaugh noted that the legislature does not want to see proposals that represent an automatic increase or decrease. The legislature wants to have the final authority to accept or reject the updates.

After discussion, it was agreed to form a subcommittee with Woody Richards, Steve Millard, Mike Haxby, James Alcorn, Patti Vaughn, and Commissioner Limbaugh. Mr. Millard agreed to invite Ron Hodge with the Idaho Medical Association to serve as well.

Change In-State Adjusting Rules - Commissioner Limbaugh reported that this subject came up briefly at the end of the last Advisory Committee meeting. The Commission sends out letters to Third Party Adjusters when an issue of timeliness has been determined which may be related to adjuster workloads. Commissioner Limbaugh noted that the Commission feels that some of the issues have been resolved, and he asked if there was any interest in moving forward with discussions to address adjuster workloads in rule. James Arnold responded that for him, there are still issues with checks being delayed, and timeliness of authorization of medical procedures which he has determined is due to excessive workloads of adjusters. Mr. Arnold stated that these issues still exist and he would like to have more discussions.

Public Comment: Scott McDougall, Benefits and Claims Manager, requested that attorneys call the Commission when issues with TPA's and adjusters arise. The Benefits Department is working on several issues with adjusters and TPA's, but these issues tend to move around from one TPA to another.

Consensus was asked for by Chairman Carrier to place the topic on the next agenda for further discussion and updates on any improvement. Consensus was reached.

Uninsured Employers Fund - Christi Simon, Employer Compliance Bureau Chief approached the members about their interest in reviving the subcommittee to establish an Uninsured Employers' Fund (UEF). She reported that the Advisory Committee used to have a pretty active subcommittee spearheaded by attorney Jack Barrett that had tried establishing a UEF. However, at that time, finding a funding source became an insurmountable issue. Idaho is one of a few states that does not have such a fund.

If the Advisory Committee has an interest, Ms. Simon would like to re-establish a UEF subcommittee to look at possible other funding sources such as penalties from employers who don't have workers compensation insurance. Other possible funding sources that were previously suggested were briefly discussed. Some research has been done on other state's laws and funding mechanisms, but more will need to be done. Gardner Skinner stated that he has seen an increase in the number of injured workers that were uninsured and thinks it is necessary to revisit this issue.

UEF Subcommittee members are: Subcommittee Chairman James Kile, Gardner Skinner, James Arnold, John Greenfield, Commissioner Maynard, Blair Jaynes, Christi Simon, Clay Atwood, Roy Galbreath, and Kimberly King.

Nominations/Election of Employer Representative – Chairman Carrier reported that Advisory Committee member Linda Sams is unable to complete her term as an Employer Representative and election of nominees to fill that position is necessary. Nominees who submitted their name to fill the vacant position for the remaining term is Jacki Royster with Buck

Knives in Post Falls, and Susan Shiplett with Essential Metals Corporation in Kellogg. Members were asked if any other nominees should be added to the ballot. No additional nominees were presented. Short bios provided by the nominees were reviewed, and election was held by secret ballot. The nominee receiving the most votes will be recommended to the Commissioners for approval.

Industrial Commission Report:

Commissioner Limbaugh reported on recent Commission activities such as working with the Tax Commission on an information sharing agreement. He reported that the information being received from the Department of Labor has generated an increase in the number of employers found not carrying workers' compensation insurance.

Lindsay Egbert, the Commission's new Public Affairs Specialist was introduced by Commissioner Limbaugh who also noted that the Commission's annual seminar was very successful again this year. Commissioner Limbaugh reported that the Commission is not proposing any new legislation this year, but is proposing amendments to two rules: IDAPA 17.02.09, *Medical Fees*, that includes minor medical fee updates, and 17.02.11, *Security for Compensation, Self-Insured Employers*. Commissioner Limbaugh stated that the Commission held hearings around the state on IDAPA 17.02.11, and no comments, written or verbal, were received.

Topics for the next meeting scheduled for February 8, 2012:

Subcommittee Reports:

Independent Medical Evaluations

Uninsured Employers Fund

Healthcare Annual Update

Indemnity Benefit Notice – Review of draft letter

Update on In-state Adjusting Issues

ISIF Update

There being no further business, the meeting adjourned.